In the High Court of Judicature at Madras

Dated : 16.7.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN

and

The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.946 of 2007

The Commissioner of Income Tax
Salem .. Appellant

Vs

M/s.A.G.Granites (P) Ltd.,
Muthu Gounder Colony
Harur 636 903. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'D' Bench dated 27.12.2006 made in I.T.A.No.1154/Mds/2005 for the assessment year 2002-03 against the order of Dy.Commissioner of Income Tax, Company Circle, 'D-Bench Salem, dt.27.12.2006, in ITA No.1154/mds-2005',against the order of Commissioner of Income Tax (Appeals) Salem, dt.25.2.2005 in ITA No.3 63/2004-05 arising out of the order of Assistant Commissioner of Income-Tax, Salem -7 dt. 19.3.2004 in IDCA0060/ACIT/Coy/SLM for the assessment year 2002-2003.

For Appellant : Mr.T.Ravi Kumar
Standing Counsel (Income Tax)

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JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed raising the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal

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is right in holding that deduction under Section 10B as well as under Sec.80HHC could not be rectified under Section 154 ?

2. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that rectification order under Section 154 was not proper especially when the audit had raised an objection that the interest income of Rs.2,14,457/- was to be brought to tax under the head "income from other sources" ?

3. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in not considering the judgment of the Supreme Court in the case of Pandian Chemicals Vs. CIT reported in 262 ITR 278, wherein it was held that the interest income has to be considered as income from other sources and that of the Punjab and Haryana Full Bench in the case of CIT Vs.Smt.Aruna Luthura reported in 252 ITR page 76 which had held that proceedings for rectification of an order can be initiated on the basis of an order passed by jurisdictional High Court or the Supreme Court subsequent to the order passed by the authority under the Act ?

2. The necessary facts as culled out from the grounds are as follows:-

The assessee, a Company exporting granite blocks to foreign countries, had filed the return of income for the assessment year 2002-03 on 31.10.2002 admitting an income of Rs.9,68,900/- after claiming deduction under Section 10B to the extent of Rs.1,32,389/- The said return was processed under Section 143(1) and refund of Rs.1,280/- was allowed. On verification of the records, it was noticed that the assessee had offered interest income of Rs.2,14,457/- on FD made under the head other income, but the same was required to be assessed under the head "income from other sources". Hence a notice under Section 154 of the Act was issued to the assessee calling for his objection, if any for treating the said income as indicated in the notice. The assessing officer after considering the reply has rectified the assessment order by his order dated 19.3.2004 as proposed in the notice. The appeal filed by the assessee in I.T.A.No.63/2004-2005 before the Commissioner of Income Tax (Appeals), questioning the correctness of rectification of assessment under Section 154 was dismissed on 25.2.2005. The assessee filed further appeal before the Income Tax Appellate Tribunal in I.T.A.No.1154/2005. The Tribunal allowed the appeal by holding that the debatable issues should not be rectified under Section 154 of the Income Tax Act.

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Not satisfied with the order of the Tribunal, the present appeal is filed by formulating the above said three questions of law.

3. Learned Standing Counsel for the Revenue argued that the language employed in Section 154 of the Income Tax Act is very wide in its amplitude and it should be construed to encompass in it any mistake apparent from the record. In order to sustain the case of the Revenue, the decision of the Supreme Court in PANDIAN CHEMICALS LTD. VS. COMMISSIONER OFINCOME-TAX (262 ITR 278) and the decision of the Full Bench of the Punjab and Haryana High Court in the case of COMMISSIONER OF INCOME-TAX VS.SMT. ARUNA LUTHRA (252 ITR 76) have been relied upon.

4. We heard the arguments of the learned counsel appearing for the Revenue and perused the materials on record.

5. The point in issue is, whether the "interest income" offered by the assessee under the head "other income" could be re-assessed under the head of "income from other sources" by way of rectification and on the basis of the objection raised by the audit members. It is a debatable issue when there are two opinions about the head of income under which the interest income has to be assessed one by the assessee and the other by the revenue.

6. Section 154 of the Income-tax Act provides for rectification of mistakes, which are apparent from the record. The phraseology "mistake apparent from the record" has been considered by several judicial opinions and all those judicial opinions uniformly held that an error, which is not self evident, and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record. There is a clear distinction between an erroneous order and an error apparent on the face of the record, while the first could be corrected by the higher forum, later only could be corrected by exercise of power of rectification.

7. The scope and amplitude of Section 154 of the Income-tax Act, 1961 has been considered by the Supreme court in the case of T.S.BALARAM, INCOME TAX OFFICER, COMPANY CIRCLE IV, BOMBAY VS. VOLKART BROTHERS (82 ITR 50) wherein it was held that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record, which is not amenable for rectification under Section 154 of the Income-tax Act.

8. A Division Bench of this Court in the case of COMMISSIONER

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OF INCOME TAX VS. SHARP INDUSTRIES (2006) 282 ITR 336), in which one of us (P.P.S.Janarthanaraja,J.) was a party, while considering the question of law as to "whether the Income-tax Appellate Tribunal was right in holding that the assessee therein was entitled to deduction in respect of interest income under sections 80HHC and 80-I of the Income-tax Act", has held that interest income is eligible for special deduction under sections 80HHC and 80-I of the Income-tax Act, 1961, provided it is included in the computation of profits and gains of the business. Special deduction cannot be disallowed in rectification proceedings under section 154 of the Act, especially when the interest income is included in the profits of the business.

9. In yet another Division Bench decision of this Court in the case of COMMISSIONER OF INCOME TAX VS. SESHASAYEE PAPER AND BOARDS LTD (2006) 283 ITR 200) , while considering the question of law, as to "whether the Tribunal was right in holding that the assessee should be granted the benefit of section 80HHC as per its claim, as the quantification could not be considered under Section 154 of the Income-tax Act", it was held that the question of relief under section 80HHC of the Act was a debatable issue and would not fall within the purview of Section 154 of the Income-tax Act.

10. The decision of the Supreme Court relied on by the learned counsel for the revenue in the case of PANDIAN CHEMICALS LTD. VS. COMMISSIONER OFINCOME-TAX (262 ITR 278), we are of the view, is not helpful to the revenue on the point in issue, whether a debatable issue can be rectified by invoking Section 154 of the Income-tax Act. That was a case in which the High Court while considering the issue, "whether the Appellate Tribunal was right in holding that the interest on deposits with Tamil Nadu Electricity Board should be treated as income derived by the industrial undertaking for the purpose of section 80HH", answered the question in favour of the Department and against the assessee. On appeal to the Supreme Court, the Supreme Court rendered the meaning to the phraseology "derived from" employed under Section 80HHC and held that the interest derived by the industrial undertaking of the assessee thereon on the deposits made with the Electricity Board for the supply of electricity for running the industrial undertaking could not be said to flow directly from the industrial undertaking itself and was not profits or gains derived by the undertaking for the purpose of special deduction under section 80HH. Hence, the decision is no way helpful to resolve the point in issue in this case.

11. The Full Bench decision of the Punjab and Haryana High Court in the case of COMMISSIONER OF INCOME-TAX VS. SMT.ARUNA LUTHRA (252 ITR 76) relied on by the revenue also does not advance the case of the revenue, because in that case also, uniform judicial opinion has been re-affirmed by stating as follows:

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"... While an assessment under section 143 or 144 has to be normally made within a period of one or two years, the mistake can be rectified at any time during the period of four years. The obvious intention of the Legislature is that if the mistake has come to the notice of the authority within the prescribed time, it should not be allowed to continue. Section 154 clearly provides for the intervention of the authority within the specified time, subject to the condition that the mistake is apparent and the issue is not debatable.

(emphasis supplied)

12. As we have already come to the conclusion that the issue as to the head under which the "interest income" has to be assessed is a debatable issue, the above said decision of the Punjab and Haryana High Court goes against the plea of the revenue.

13. For the fore-going reasons, we are of the view that the appellant has not made out any question of law for determination in this appeal and the appeal fails and the same is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

krr/usk

To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   Chennai-600 034

2. The Commissioner of
   Income-tax (Appeals)
   Salem

3.The Assistant
  Commissioner of
  Income Tax,
  Company Circle
  Salem.

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4.The Deputy Commissioner of Income-Tax
Company Circle, Salem 636 007.

5.The Asst. Registrar,
Income Tax Appellate Tribunal,
Bench 'C' Rajaji Bhavan, 3rd Floor,
Besant Nagar,Madras -90.

6.The Secretary,
Central Board of Direct Taxes,
New Delhi.

+1cc to Mr.N.Muralikumaran, Advocate Sr 43142

MDR (CO)
km/17.10.

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